



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 22, 2016

Ms. Amber K. King  
General Counsel  
Lake Travis Independent School District  
3322 Ranch Road 620 South  
Austin, Texas 78738

OR2016-14122

Dear Ms. King:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 615303.

The Lake Travis Independent School District (the "district") received three requests from the same requestor for (1) any billing statements, invoices, and receipts for legal expenses of the district for a specified time period; (2) communications between the district and the United States Department of Education, Office of Civil Rights during a specified time period; and (3) communications between the district and a named individual regarding playground accessibility at Lakeway Elementary. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for

the purpose of our review in the open records ruling process under the Act.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”); *see also* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). The district has submitted redacted and unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider the district’s arguments against disclosure of the submitted information.

We note, and you acknowledge, some of the submitted information consists of attorney fee bills that are subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for required public disclosure of “information that is in a bill for attorney’s fees and that is not privileged under the attorney-client privilege,” unless the information is expressly confidential under the Act or other law. Gov’t Code § 552.022(a)(16). However, we note the Texas Supreme Court has held the Texas Rules of Evidence are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will address your claims of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client’s representative and the client’s lawyer or the lawyer’s representative;

(B) between the client’s lawyer and the lawyer’s representative;

(C) by the client, the client’s representative, the client’s lawyer, or the lawyer’s representative to a lawyer representing another party in a

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General’s website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the submitted fee bills contain communications that were intended to facilitate the rendition of legal services to the district. You further state these communications were intended to be, and have remained, confidential. Based on your representations and our review, we conclude the district may withhold the information we marked under rule 503 of the Texas Rules of Evidence. However, we find the remaining information at issue either does not indicate it was communicated or consists of communications with parties whom you have not established are privileged parties for purposes of rule 503. We note an entry stating a memorandum or an e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Therefore, we find you have failed to demonstrate the applicability of the attorney-client privilege to the remaining information at issue. Accordingly, the district may not withhold the remaining information at issue under rule 503 of the Texas Rules of Evidence.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and

encompasses information made confidential by other statutes. *See* Gov't Code § 552.101. Section 552.101 encompasses section 574(b) of title 5 of the United States Code, which provides in part “[a] party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication[.]” You assert the submitted information pertains to Early Complaint Resolutions (“ECR”), which are governed by section 574 of the Administrative Dispute Resolution Act of 1996. Upon review, we find portions of the submitted information constitute communications made by a participant in an alternative dispute resolution procedure under section 572(a) of title 5 of the United States Code. *See* 5 U.S.C. § 572(a) (providing for the use of dispute resolution proceedings in the administrative process). None of the exceptions in section 574(b) appears to apply in this instance. Therefore, the district must withhold the information we have marked under section 552.101 in conjunction with section 574(b) of title 5 of the United States Code.<sup>2</sup> However, you have not established that any of the remaining information consists of communications made during a dispute resolution proceeding under section 574(b) of title 5 of the United States Code. Accordingly, the district may not withhold the remaining information under section 552.101 in conjunction with section 574(b) of title 5 of the United States Code.

You next claim the remaining information is excepted from disclosure under section 552.101 in conjunction with section 154.073 of the Texas Civil Practice and Remedies Code, which provides in pertinent part:

(a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

Civ. Prac. & Rem. Code § 154.073(a). However, we find the district has not established any of the remaining information consists of communications relating to a civil or criminal dispute made by a participant in an alternative dispute resolution procedure. *See* Gov't Code § 552.301(e)(1)(A) (governmental body claiming exception to disclosure bears the burden to explain how and why the claimed exception is applicable to the information at issue). Therefore, the district may not withhold any of the remaining information under section 552.101 in conjunction with section 154.073(a) of the Civil Practices and Remedies Code.

In summary, the district may withhold the information we marked under rule 503 of the Texas Rules of Evidence. The district must withhold the information we have marked under

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 552.101 in conjunction with section 574(b) of title 5 of the United States Code. The district must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/bw

Ref: ID# 615303

Enc. Submitted documents

c: Requestor  
(w/o enclosures)